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Attorneys for Plaintiffs

SUSAN K. MYERS, MICHAEL F. MYERS
and KEITH J. GOTT

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

SUSAN K. MYERS, individually and as trustee of the Susan K. Myers Living Trust dated January 8, 2001, MICHAEL F. MYERS, individually and as trustee of the Susan Myers Massachusetts Trust, dated July 11, 2008, and KEITH J. GOTT, as trustee of the Michael F. Myers Massachusetts Trust, dated October 23, 2008, and the Michael F. Myers Massachusetts Trust, dated December 3, 2008,

Plaintiffs,

v.

JAMES ARCHIBALD and PORT CAPITAL MANAGEMENT LLC, a limited liability company,

Defendants.

Case No: 3:10-cv-258-RCJ-RAM

**STIPULATION AND [REDACTED], ORDER
RE DISCLOSURE OF CERTAIN
CONFIDENTIAL ATTORNEY-CLIENT
COMMUNICATIONS BETWEEN THE
MYERSES AND THE OSHINS FIRM**

1 WHEREAS, plaintiff Susan K. Myers (“Susan”) and plaintiff Michael F. Myers
2 (“Michael”) (together, the “Myerses”) retained the law firm of Oshins & Associates, LLC (the
3 “Oshins Firm”) from in or about August 2008 to in or about August 2010 to provide legal advice
4 and other services regarding matters of trust law, and the Myerses received professional services
5 from the Oshins Firm, including attorneys Steven J. Oshins, Esq., and Catherine M. Colombo,
6 Esq., at times within that time period,

7 WHEREAS, defendants James Archibald and Port Capital Management LLC (together,
8 “Defendants”) have sought production of documents and information in this action that include
9 confidential attorney-client communications between the Myerses (or Susan or Michael
10 individually) and the Oshins Firm and attorney work product by the Oshins Firm in connection
11 with its engagement with the Myerses,

12 WHEREAS, the Myerses contend that such communications and attorney work product
13 are absolutely privileged or protected from production or disclosure to Defendants based on the
14 attorney-client privilege and/or the attorney work product doctrine,

15 WHEREAS, Defendants dispute the Myerses’ assertion of the attorney-client privilege
16 and/or the attorney work product doctrine with regard to these communications and work product,
17 contending that such documents and information must be produced and disclosed under applicable
18 law in light of the nature of the Myerses’ claims against Defendants in this action,

19 WHEREAS, the Myerses dispute the grounds advanced by Defendants for their asserted
20 entitlement to receive such documents and information,

21 WHEREAS, in the interests of compromise and to avoid unduly burdening the parties and
22 the Court with motion practice related to this dispute, the parties to this action — the Myerses and
23 plaintiff Keith J. Gott (collectively, “Plaintiffs”) and Defendants — hereby stipulate, and the Court
24 orders, as follows:

25 1. Plaintiffs will produce, to the extent responsive to any valid requests for production
26 of documents or other discovery devices and subject to any objections other than those based on
27 the attorney-client privilege, documents and information reflecting matters that were actually
28 communicated between the Myerses (or Susan or Michael individually) and the Oshins Firm, but

1 only with respect to such communications that (a) Plaintiffs intend to use to support any claim in
2 this case and/or (b) relate to the Myerses' understanding of the insurance policies at issue in this
3 case and/or the premium financing transactions at issue in this case (including communications
4 that relate to any plans by the Myerses for preservation or disposition of the assets in their estates
5 and the need for life insurance or other such investment as part of such plans, but only to the
6 extent such information may bear upon the benefits and drawbacks of pursuing or maintaining the
7 premium-financed life insurance transactions at issue or accomplishing the ostensible purposes of
8 those transactions).

9 2. The Myerses will not produce or disclose attorney-client communications that
10 relate to matters that are independent of or merely ancillary to the policies or the premium
11 financing transactions, including, without limitation, the Myerses' efforts to address and correct
12 concerns about the terms of the Massachusetts trust documents or the structuring of the
13 Massachusetts trusts or the Myerses' consideration of the bond financing transaction through The
14 Frazier Lanier Company, Inc. that Mr. Archibald proposed to the Myerses but the Myerses never
15 completed. The Myerses also will not disclose any confidential attorney-client communications or
16 attorney work product on the part of the Oshins Firm that was not conveyed to them prior to the
17 commencement of this action.

18 3. The Myerses' production or disclosure of documents or information in this action
19 pursuant to paragraph 1 above shall not waive or otherwise prejudice any rights the Myerses may
20 have to assert in this action the attorney-client privilege or attorney work product doctrine as a
21 defense to production or disclosure of any other documents or information not produced or
22 disclosed in this action, nor shall anything contained herein waive or otherwise prejudice any right
23 Defendants have to seek production of additional information.

24 4. The Myerses' production or disclosure of documents or information in this action
25 pursuant to paragraph 1 above shall not waive or otherwise prejudice any rights the Myerses may
26 have to assert in any other action, arbitration, or proceeding the attorney-client privilege or
27 attorney work product doctrine as a defense to production or disclosure of the documents or
28 information so produced or disclosed in this action, or as a defense to production or disclosure of

1 any other documents or information not produced or disclosed in this action, nor shall anything
2 contained herein waive or otherwise prejudice any right Defendants have to seek production of
3 additional information.

4 5. This Order shall be binding on the parties stipulating hereto and any parties who
5 may be added to this action.

6 6. Any party receiving any documents or information produced pursuant to paragraph
7 1 above shall not make public such documents or information and may not use them for any
8 purpose other than discovery and other trial preparation, motion practice, trial, writs or appeals in
9 this action. Such party may use and disclose such documents or information solely as provided by
10 any applicable Protective Order the Court may enter in this action.

11 DATED: May 18, 2011

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

13 By: /s/ Charles N. Freiberg
14 Charles N. Freiberg (Admitted *Pro Hac Vice*)
15 101 California Street, Suite 2300
San Francisco, CA 94111

16 Attorneys for Plaintiffs
Susan K. Myers, Michael F. Myers, and Keith J. Gott

17 DATED: May 18, 2011

BOWDITCH & DEWEY LLP


19 By: /s/ Louis M. Ciavarra
20 Louis M. Ciavarra (Admitted *Pro Hac Vice*)
21 311 Main Street
Worcester, MA 01608

22 Attorneys for Defendants
23 James Archibald and Port Capital Management LLC

24 Pursuant to the parties' stipulation, and good cause appearing,

25 **IT IS SO ORDERED.**

26 Dated: May 19, 2011

27 
28 Honorable Robert A. McQuaid, Jr.
United States Magistrate Judge

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JAMES ARCHIBALD and PORT CAPITAL MANAGEMENT LLC, a limited liability company,

Defendants.

Case No: 3:10-cv-258-RCJ-RAM

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, JANE SULLIVAN, declare that I am a citizen of the United States and I am over 18 years of age. I am not a party to the above entitled action. My business address is 101 California Street, Suite 2300, San Francisco, California 94111.

On May 18, 2011, I caused the attached document entitled:

**STIPULATION AND [PROPOSED] ORDER RE DISCLOSURE OF CERTAIN
CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATIONS BETWEEN THE
MYERSES AND THE OSHINS FIRM**

to be sent to the following:

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MANAGEMENT, LLC

☒ **By Electronic Service (LR 5-3).** I caused the above-documents to be electronically filed on this date with the clerk of the Court using the CM/ECF system, which will automatically e-serve the same on the attorneys of record indicated on the generated Notice of Electronic Filing and served as follows any attorneys of record which are designated on the Clerk's Service List(*) to require alternate service as follows:

By Mail. I placed the above-documents in sealed envelope(s), with postage thereon fully prepaid, for collection and mailing at San Francisco, California, following ordinary business practices. I am readily familiar with the practices of Kasowitz, Benson, Torres and Friedman for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for processing.

By Federal Express. I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by Federal Express to receive documents, in an envelope or

1 package designated by Federal Express.

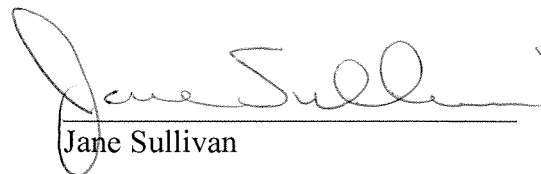
2 **By Personal Service.** I caused the above documents to be delivered by hand to the addressee(s)
3 noted above.

4 **By Facsimile.** I caused the above documents to be served via facsimile electronic equipment
5 transmission to the number indicated after the address(es) noted above.

6 **By Email.** I caused the above documents to be served via email transmission to the e-mail
7 addresses noted above.

8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed on May 18, 2011 at San Francisco, California.

10 
11 Jane Sullivan